IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WA.No. 1824 of 2007

(AGAINST THE ORDER IN I.A.NO. 5678 OF 2007 IN WP(C.)21974/2004 Dated 21/06/2007)

APPELLANT/1ST RESPONDENT IN I.A. AND W.P.(C)

THE GENERAL SECRETARY,
KERALA PLANTATION EMPLOYEES UNION (CITU),PUNALUR.

BY ADV. SRI.B.S.SWATHY KUMAR
ADV. SRI.BINDU SREEKUMAR

RESPONDENTS/ PETITIONER & 2ND RESPONDENT IN I.A. AND W.P.(C)
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1. THE MANAGEMENT OF AMBANAD ESTATE,
AMBANAD POST, KALTHURUTHY, KOLLAM.

2. THE LABOUR COURT, KOLLAM.

R1 BY ADV. SRI.U.K.RAMAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1824 OF 2007

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Dated this the 24th July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The respondent in this Writ Appeal is the petitioner in the Writ Petition (C)No. 21974 of 2004. It has called in question the legality or otherwise of the orders passed by the Labour Court, Kollam in I.D. No. 87 of 1998 dated 28th February, 2004 in the Writ Petition filed.

2. This Court while entertaining the Writ Petition has granted an interim order staying the operation of the award passed by the Labour Court, subject to the condition that the respondent herein shall pay 17B wages to the workmen. An interlocutory application, I.A.No. 5678 of 2007 was filed by the petitioner/employer-management, seeking modification of the order in I.A.No.15111 of 2005 dated 26.09.2006 (I.A.No.15111 of 2005 was filed by the 1st respondent in the Writ Petition). In the said application, they sought a direction permitting them to take back the workmen into service and to pay him salary at the rate that he was drawing at the time when he was discharged from service as a probationer. The learned single Judge has allowed that application and has passed the impugned order, which reads as follows:

> *"In the above circumstances, the order dated 26.09.2006 is modified to the effect that as an alternative to paying wages under Section 17B, the petitioner in the writ petition can*

reinstate the workman involved in the industrial dispute by paying wages at the rate of Rs.1992. 80 provisionally, subject to final orders in the writ petition.

3. Aggrieved by the interim order passed by the learned single Judge, the workman through his union, is before us in this Writ Appeal.

4. Learned counsel for the appellant would contend before us that the learned single Judge, having permitted the respondent herein/employer to take back the workman into service , ought to have directed the employer to pay him the salary of a probationer. Instead of doing so, the learned single Judge has pegged down the salary of the workman at the rate of Rs.1992.80/- per month.

5. The learned counsel for the respondent herein/employer would vehemently contend before this court that the workman was discharged from the service when he was working as a probationer in the respondent's (herein) firm/organization. At the time, when he was discharged from service, he was drawing the salary at the rate of Rs. 1992.80/- per month and it is that salary can be paid by the respondent/management, learned counsel submits. Therefore, according to the learned counsel for the respondent herein/management, the learned single Judge is fully justified in passing the impugned order. In our opinion, the said contention of the learned counsel would not impress us.

6. The admitted facts are: The workman (who is before us in this appeal through his union) was appointed as a probationer by the respondent herein. While he was in probation, he was discharged from service. Aggrieved by the action of the respondent herein/management, the workman

was before the Labour Court in I.D.No. 87 of 1998. The Labour Court , by its award dated 28th February, 2004 had directed the respondent herein/management to reinstate the workman into service with 50% backwages. The award passed by the Labour Court is the subject matter of the Writ Petition at the instance of the respondent herein/employer-management.

7. The respondent herein/employer, during the pendency of the Writ Petition has filed an interlocutory application seeking a direction permitting them to take back the workman into service and to pay him the salary at the rate of Rs.1992.80/- per month, which was the salary drawn by the workman, when he was discharged from service. In our opinion, even this offer so made by the respondent herein/employer cannot be accepted for the reason that during the pendency of the Writ petition, the employer shall pay either 17B wages to the workman or in the alternative, the employer shall reinstate the workman into service with wages payable as on the date of his reinstatement into service. In the instant case, the learned single Judge while allowing the application filed by the respondent herein/management has restricted the claim of the workman . In our opinion, it is fully impermissible. Therefore, the following:

O R D E R

i) The Writ Appeal is allowed.

ii) The orders passed by the learned single Judge is set aside.

iii) The respondent herein/management is directed to reinstate the workman into service with wages payable to a probationer as on today.

iv) Liberty is also reserved to the respondent herein/management, either to reinstate the workman into service or to pay 17B wages to the workman during the pendency of the Writ Petition.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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